Death with Dignity: An Analysis Of Euthanasia

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ABSTRACT

The topic of Euthanasia has been debated across the world for long and it has great significance in the contemporary society because it raises the questions in medical ethics, moralvalues, civilrights ,personal liberty and right to privacy. Euthansia or Mercy killing implies a strong emotions since its is associated with the life and death issues, as it is the ending the life on the request of deceased. An individual who is subjected to perpetual chronic illness and the traumatizing pain; both mental and physical may find this a relief. However, the interdependencies within our society poses a question on whether or not their loved ones may state their opinion. Further one might also question whether right to life encompasses a right to die. If so, then what makes suicide and euthanasia different from each other?

This article aims to approach euthanasia and its application in the process of death. Initially, the article gives a definition and explanation regarding the term euthanasia and its historical perspective. Later on, discusses about the different forms of euthanasia with judicial views and case laws. The global views are explained with legislations of few countries are approached. The article gives its main attention to the development of euthanasia in India and its historical background is also analysed. An overview of the two landmark judgements Arunashanbaugh’s case and Common cause v UOI case is also summarised in this article.

I. INTRODUCTION

“A long illness between life and death makes death a comfort both to those who die and to those who remain”

- Jean de La Bruyere.

From the very inception of a person’s birth he is clootted with several basic rights. Years ago, when there was no advancement for in medical technology to keep a terminally ill patient alive, such patients were meeting their death on account of natural causes. In the present scenario law provides a right to terminally ill patients to refuse modern medical procedures and allow nature to take its own course as was done in the good old days. The meaning of the term ‘life’ has been incorporated under the Indian Constitution which put into words as right to life is not merely confined to physical existence but it includes within its ambit the right to live with

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human dignity. Life comes in existence from the conception and is equally respected till death occurs whereas, the destruction of life is both ethical and moral wrong and punished as a legal wrong all over the world. Every democratic country places life of a human at the highest pedestal. The Indian Constitution provides that “No person shall be deprived of his life and personal liberty except according to the procedure established by the law”. It is insisted that each individual has an inherent right to die with dignity which is an important facet of Article 21 of Indian Constitution. The right to die sans pain and suffering is fundamental to one’s own bodily autonomy and such integrity does not remotely accept any efforts that puts the individual on life support without any ray hope on the contrary, the whole regime of treatment continues in spite of all being aware that it is a Sisyphean endeavour, an effort to light a bulb without the filament or to expect a situation to be in an apple pie order when it is actually in a state of chaos.

II. DEFINITION OF EUTHANASIA

The English philosopher Sir Francis Bacon coined the phrase “Euthanasia” early in the 17th century. Euthanasia is derived from the Greek word EU, meaning “good” and Thanatos meaning “death”, and early on signified a “good” or “easy” death. It is about the administration of drugs with the expect intention of ending the patient’s life request. Euthanasia literally means putting a person to a painless death especially in case of incurable suffering or when life becomes purposeless as a result of mental or physical handicap.

According to the Black’s Law Dictionary (8th edition) euthanasia means the act or practice of killing or bringing about the death of a person who suffers form an incurable disease or a condition especially a painful one, for reasons of mercy. The concept is mainly associated with people with terminal illness, or who have become incapable and don’t want to go through the rest of the life suffering. Mercy killing is the practice of killing a person for giving relief from incurable pain or suffering or allowing or causing painless death when life has become meaningless and disagreeable.

III. HISTORICAL BACKGROUND

Euthanasia has deep historic roots. Before Hippocrates, euthanasia was a routine procedure and physicians assumed that they had the authority to kill patients for whom they gave up the hope of recovery without asking for their permission. They accepted euthanasia as a part of their medical practice. Hippocrates regarded this act of killing as a hindrance to the establishment of confidentiality between physicians and patients. Probably, this

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2 Maneka Gandhi v.UOI ,A.I.R. 1987 SC 597
3 Article 21, Indian Constitution, 1950
4 Common Cause v.UOI, W.P. (Civil) 215 of 2005
5 Dr. Parikh C.K, Textbook of Medical Jurisprudence’s Forensic Medicine and Toxicology, 6th edition, New Delhi, CBS Publishers & Distributions.
led to the use of the words in The Hippo Oath, “I will give no deadly medicine to anyone if asked, nor suggest any such counsel.”

The right to die or end one’s life is not something new or unknown to human civilization. In ancient Greece and Rome helping others to die or putting them to death was considered as a permissible in some situations. Many ancient texts including Bible, the Korang and the Rig-Veda mention self-destruction or suicide.

IV. DIFFERENT TYPES OF EUTHANASIA

(i). Active or Positive:

A deliberate life shortening act is called Active euthanasia. This involves causing the death of a person through the response to a request from that person. Here specific steps and procedures are undertaken by the third party like the administration of a lethal drug, which is a crime in India and most parts of the world under section 302 or 304 IPC. According to A.H. Clough, a Victorian poet, “thou shall not kill, but need not strive officiously to keep alive” i.e., no on shall intentionally kill a person, at the same time no one shall be forced to be alive. The former targets active euthanisa and the latter fours passive euthanasia.

In Airedale NHS Trust v. Bland, Lord Goff, while drawing such differentiating line has stated that the law draws a crucial distinction between cases in which a doctor decides not to provide, or not tot continue to provide, for his patient treatment or care which could prolong his life and those in which he decides by administering a lethal drug, actively to bring his patients life to an end. The former act may be considered lawful, either because the doctor intends to give effect to his patients wishes by withholding the treatment or care, or even in certain circumstances in which the patient is incapacitated from giving his consent. However, it was not lawful for the doctor to administrate a drug to his patient to bring about his death, even though that course is prompted by a humanitarian desire to end his suffering, even if the act of causing death may avoid or end the patients suffering.

(ii). Passive euthanasia:

Passive euthanasia entails withholding of medical treatment for continuance of the life, where without giving the proper assistance e.g., turning of respirator, removal of ventilator and another common example is over dose of morphine, which is normally given to control of the pain, the overdose may supress respiration and cause death. The deliberate omission of life lengthening act is called passive euthanasia. It involves not doing something to prevent death as when doctor refrain from using device necessary to keep alive a terminally ill

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8 The Indian Penal Code, 1860 Section 302 &304.
10 (1993) 1 All ER 321 (HL) at 860.
patient or a patient in a persistent vegetative state\textsuperscript{11}.

In \textbf{Nancy Cruzan v. Director, Missouri Department of Health}\textsuperscript{12}, allowing someone to die by disconnecting life-support equipment. The US Supreme Court allowed the removal of the feeding tube not with an intention to kill her but to allow her to die a natural death.

\textbf{(iii). Voluntary Euthanasia:}

In Voluntary euthanasia death is caused by the direct action done by a person in response to a request from the patient. It includes the intentional administration of lethal drugs in order to terminate painlessly the life of a patient suffering from an incurable condition deemed unbearable by the patient at the patient's request\textsuperscript{13}. To repudiate an attempt to control the life of a person, who has their own autonomous view about how his life should end, constitutes an ultimate denial of respect for the persons. To prolong life uselessly, while the personal qualities of freedom, knowledge, self-possession and control and responsibility are sacrificed, is to attract the moral status of the person\textsuperscript{14}.

\textbf{(iv). Involuntary Euthanasia:}

This term is used to describe the killing of a person who has not explicitly requested aid in dying. This is the most often done to the patients who will not probably recover. The patient is not in a condition to permanently relive himself from the incurable pain. Patients who are in persistent vegetative state, loses all his physical and mental functions but still biologically alive in such conditions there is no hope of recovery. The US Supreme Court gave the hints of utilitarian thinking in \textbf{Glucksberg}\textsuperscript{15} and \textbf{Quill}\textsuperscript{16}, the major worry involve in involuntary euthanasia is whether such a practice will bring more harm than social benefits

\textbf{V. GLOBAL PERSPECTIVE}

21\textsuperscript{st} century controversies over euthanasia are often seen as a by-product of advancements in bio-medical technology capable of prolonging and preserving life of a terminally ill patient indefinitely. Associations promoting legal euthanasia in many countries now-a-days but it is worthwhile to note that the first futile attempt to legalize euthanasia was made in 1936 in England\textsuperscript{17}. Organizations supporting the legalization of voluntary euthanasia were established in Britain in 1935 and the US in 1938. They had gained some public support, but have so far been unable to achieve their goal in either nation\textsuperscript{18}. As of now, euthanasia is legal in

\textsuperscript{12} 497 U.S. 261 (1990).
\textsuperscript{14} Otlowski Margaret, Voluntary Euthanasia and the Common Law, New York: Oxford University Press, 1997.
\textsuperscript{16} Vacca v. Quill, 138 L.Ed.2d 834.
Netherlands, Belgium, Colombia, Luxemburg and Canada, Assisted suicide is legal in Switzerland, Germany, Japan and in the US states.

In April 2002, the Netherlands became the first country to legalise euthanasia and assisted suicide by imposing strict sets of conditions i.e, the patient must be suffering unberable pain and the illness must be incurable, and the demand must be made in “full consciousness” by the patient. Euthansia and assisted suicide are against the laws of France, by the introduction of “Leonetti law” in 2005 the concept of the right to be “left to die”. Under strict conditions it allowed doctors to decide to ‘limit any treatment that is not useful, is disproportionate or has no other object than to artificially prolong life’. Doctors allowed prescribing lethal doses of medicine to terminally ill patients in Five US states. The US state of Oregon’s Death with Dignity Act, 1977 recognised physician assisted suicide and not active euthanasia. Oregon was the first state in US to legalise assisted suicide. In Germany euthanasia is generally avoided because of the Nazi era. But in Germany and Switzerland active assisted suicide is illegal but the laws allow assisted suicide within certain circumstances. Belgium passed a law in 2002 and became the second county to legalise euthanasia and the first county to legalise euthanasia to children. The law says that doctors can help patients to end their lives when they freely express a wish to die.

VI. INDIA VIEW REGARDING EUTHANASIA

The first step towards the legalisation of euthanasia in India was taken in the year 1985. A private bill was moved in the Upper house of Maharashtra legislature. The said Bill contained the provisions regarding the legal protection by way of immunity from civil and criminal liability to all doctors who remove artificial life prolonging measures at the request of terminally ill patient. A bill has also been introduced in Lok Sabha in 2007 titled “The Euthanasia (Permission and regulation ) Bill ,2007 ,to provide for compassionate ,humane and painless termination of life of individuals who have become completely and permanently invalid or bed-ridden due to suffering from incurable disease on any other reason or matters connected there with. The statement and objects and reasons say that in such cases euthanasia is necessary because the patient has the right to put his pain and agony to an end in a decent and dignified manner as there is no hope of recovery. The bill was a good step in this direction, but it could not become a law.

In India, the sanctity of life has been placed on the highest pedestal. The right to life under Article 21 has received the widest possible interpretation under the able hands of the judiciary. This right is inalienable and

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inherent in us.\textsuperscript{22} The question whether right to life under Article 21 of the Indian Constitution include right to die came for consideration for the first time before the Bombay High Court in the \textbf{State of Maharashtra V.M.S.Dubai}\textsuperscript{23}, it was held that the right to life includes the right to die. Consequently the court struck down section 309 of IPC which provides punishment for the attempt to commit suicide as unconstitutional by holding that the desire to die is not unnatural but merely abnormal and uncommon. The Supreme Court upheld the decision of Bombay HC verdict in \textbf{P.Ratnam v.UOI}\textsuperscript{24}. However, the decision of five judge bench of the Supreme Court in \textbf{Gain Kaur v.Stateof Punjab}\textsuperscript{25}, it was settled that the right to life guaranteed by the Article 21 of the Indian Constitution does not include the right to die. Article 21 is a provision guaranteeing “protection of life and personal liberty” and by no stretch of the imagination can extinct of life be read into it.

The 196\textsuperscript{th} Report of the Law Commission of India on “\textit{Medical Treatment to Terminally Ill Patients (Protection of Patients and Medical Practitioners)}” is n of the most important subjects ever taken by the Law Commission of India for the comprehensive study. This report is relating to the law applicable to the terminally ill patients including patients in presentative vegetative state, who desire to die with a natural death without going through modern life support measures\textsuperscript{26}.

\begin{quote}
\textit{“Life and death are inseparable. Every moment our bodies undergo change ...Life id not disconnected from death. Dying is a part of the process of living.”}
\end{quote}

-Justice Chandrachud.

On March 9, 2018 passive euthanasia became a legal reality in India, recognising the “living wills” made by the terminally ill-patients, the Supreme Court held that the right to die with dignity is a fundamental right. A five judge Bench of the Supreme Court headed by the former Chief Justice of India Deepak Mishra, issued guidelines in recognition of “\textit{living wills}” made by terminally ill-patients.

\textbf{Aruna Ramachandran Shanbaug V. UOI}\textsuperscript{27}

Aruna Shanbaug is a former nurse from Haldipur, Karnataka. In 1973, while working as a junior nurse at King Edward Memorial Hospital, Mumbai, she was sexually assaulted by a ward boy and has been in a vegetative state since assault 24\textsuperscript{th} January, 2011, after she had been in this state for 37 years, the SC of India responded to the plea for euthanasia filed by Pinki Virani, by setting up a medical panel to examine her.

\textsuperscript{22} Dr.Sanjeev kumar Tiwari, Concept of Euthanasia in India-A Socio-Legal analysis, International Journal of Law and Legal Jurisprudence Studies Volume,Issue 3.

\textsuperscript{23} A.I.R 1977 SC 411.

\textsuperscript{24} 1994(3) SCC 394.

\textsuperscript{25} A.I.R 1996 SC 946.


\textsuperscript{27} (2011) 4 SCC 454.
The Court lastly dismissed the petition filed and observe that passive euthanasia is permissible under supervision of law in exceptional circumstances but active euthanasia is not permitted under law, also recommend to decriminalise attempt to suicide by erasing the punishment provide under the IPC.

**Common Cause v.UOI**

The Constitutional bench of the SC declared that “death with dignity” *is a part of “meaningful existence”*. This decision was an outcome of the PIL filed by the NGO common Cause in 2005. Upholding the Aruna Shanbaug’s decision, on March 2018 the SC settled the ongoing discourse by recognising ‘living wills’ by terminally ill a patient, and by laying down the guidelines and safeguards. Living will provide patients with the right to pre-determine the matter of implanting euthanasia in case of terminal illness. In the absence of such instrument, the commencement of the withdrawal of medical treatment is determine by the physicians and the relatives and not by the ill patients. The SC imposes an excessive burden on the physician to determine the irreteriable terminal condition of the patient, only after which withdrawal of medical assistance would be permitted by the guardians of the patient. There cannot active introduction of any medicines to expedite a patient’s death.

**VII. CONCLUSION**

In conclusion, emphasising the views of Marcus Aurelius that “the death cannot cry out for justice, it is the duty of the living to do so for them”. Every human life is of intrinsic importance and it is the quality of the life that must be preferred over the sanctity of life of a terminally ill patient. The terminally ill patient irrespective of whether they are confined for life to bed or not is entitled to a dignified life as that of their fellow beings who lead a normal to excellent healthy life. When our law upholds dignity of a deceased then it is our sates duty to provide well equipped laws that allow a terminally ill patient their choice as to life or death. The combination of the greying of the globe and medical advances will result in the international problems of a large aging population and the alarming increases in serious disease resulting in terminal illness.

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29 Mitakshara Goyal and Armin Rosencranz, Welcoming the Decision legalising passive euthanasia, Times of India, May 2, 2018.